Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37688
Docket No. CL-38414
06-3-04-3-366

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-13049) that:

1) The Carrier violated the Agreement on Monday, May 27, 2002 (Memorial Day) when it fails to give proper notice to the following employees that their positions would be abolished on the holiday.

David Borden	Extra Board	(EB 809)
Michael Holiday	Extra Board	(EB 815)
Jackie Saunders	General Clerk	(GC 818)
Floyd Hooks	Red Cap	(RC 807)
Edward Hilterbrand	General Clerk	(GC 811)

2) Carrier shall now be required to compensate each employee named in item 1 their respective rates at the time and one-half rate of their position, which they should have received for Carrier violation.

Please observe that copy of this notice is being sent to Carrier."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

On Monday, May 27, 2002 (Memorial Day) the position of J. Saunders, General Clerk, F. Hooks, Red Cap, and E. Hilterbrand, General Clerk, were blanked. The Organization filed a claim contending that the Carrier failed to give those employees proper notice (five days) that their positions would be blanked on the holiday. The Organization requested as a remedy that each affected employee be paid eight hours at the punitive rate. The Carrier denied the claim at all levels. The claim was progressed to the Board for final resolution.

The Organization alleges that Agreement Rule 3-C-1 (Reducing and Increasing Forces) applies in this instance. That Rule states that "an employee whose position is to be abolished shall be given as much advance notice as possible in writing, which shall not be less than five (5) working days. . . ."

The Organization also argues that it has been the practice for 30 years to post notices that holiday positions will be blanked and that five-days' notice is appropriate. The Organization presented an Inter Office Memo dated November 21, 2002, stating that four positions would be blanked on the November 28, 2002, Thanksgiving Day holiday to bolster its position that five-days' notice should be given.

The Carrier contends that there is no specific mention in the current Agreement addressing the prior notice standards that must be followed when holiday positions are blanked, nor is there any language in the Agreement that a specific penalty must be paid when proper notice is not given. It contends that Rule 3-C-1 does not apply in this case. The Carrier also objected to the Organization submitting the November 21, 2002, Memo as an indication that a practice exists to support its position.

The Board carefully reviewed the record and considered the parties' positions.

The position taken by the Organization that five days' notice should be given when holiday assignments are blanked is a reasonable one, but it is not mandated by the Agreement. Rule 3-C-1 does not address blanking holiday assignments. It addresses what is required when positions are abolished and employees are required to bid on other positions. Numerous cases cited in the record support this notion.

In its Submission to the Board, the Carrier, while challenging the Organization's position in this matter and the existence of a 30-year practice of providing a five-days' notice when positions are blanked, did comment that the five-days' notice addressed in this case is not a matter of contractual entitlement, but simply a matter of good employee relations. The Board agrees with that concept, but has no power to direct that the current Agreement be construed to require such notice.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 30th day of January 2006.

ORGANIZATION MEMBER'S DISSENT
TO
AWARD 39517, DOCKET MW-37687
AND
AWARD 39518, DOCKET MW-37688
(Referee Meyers)

It has been said more than once that one school of thought among railroad industry arbitration practitioners is that dissents are not worth the paper they are printed on because they rarely consist of anything but a regurgitation of the arguments which were considered by the Board and rejected. In this case, the Majority apparently forgot the principles in contracting out of work cases and simply followed the Carrier's submission when this award was written. The very way the Carrier handled this case smacks of bad faith and for the Majority to condone such action clearly defiles the entire railroad arbitration process.

The Majority's err here was to accept the Carrier's economic reasons for contracting out this work and stating that they are acceptable reasons therefor. The Majority held that "In this case, the Carrier did not own the appropriate equipment to perform the work and it did not make economic sense to lease the specialized equipment." The Majority's opinion flies in the face of the December 11, 1981 Letter of Understanding wherein that agreement clearly states the following,

"APPENDIX Y

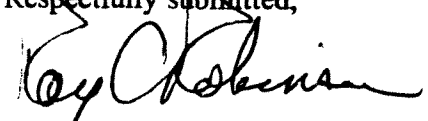
* * *

> The carriers assure you that they will assert good-faith efforts to reduce the incidence of subcontracting and increase the use of their maintenance of way forces to the extent practicable, including the procurement of rental equipment and operation thereof by carrier employes."

It is crystal clear that the parties did not consider any possible economic aspects of their actions when they entered into the December 11, 1981 Letter of Understanding as there was no language in said Understanding that would limit the scope thereof based on an economic model. Inasmuch as such was the case, the Majority's assertion that it was proper to consider economic aspects of this case as a reason to deny the claim flies in the face of the December 11, 1981 Letter of Understanding.

The award is therefore based on a faulty premise, palpably erroneous and of no precedential value. Therefore, I dissent.

Respectfully submitted,



Roy C. Robinson
Labor Member